



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



July 12, 2002

Brian and Marlene Adair
P.O. Box 26
Danbury, NH 03230

NOTICE OF DECISION
ADMINISTRATIVE FINE
No. AF 01-007 (WATER
SUPPLY)

Dear Mr. and Mrs. Adair:

As you are aware, by Notice of Proposed Administrative Fine No. AF 01-007 issued February 22, 2001, the Water Division ("the Division") sought administrative fines totaling \$3,500 against you for alleged violations of Env-Ws 325.02 and Env-Ws 351.01, the state rules relating to a water system monitoring for bacteria and providing public notice for the failure to sample, arising from activities on property located on Route 104, Danbury, NH ("the Water System"). Pursuant to RSA 485:58, IV and based on my review of the evidence presented at the hearing held on this matter on July 16, 2001, and the rehearing held on March 11, 2002, I have concluded that a fine of \$3,500 is appropriate as set forth below:

A fine in the amount of \$100 is imposed against you for failing to submit water samples for total coliform analysis in the Water System's scheduled month of February 2000.

A fine in the amount of \$200 is imposed against you for failing to submit water samples for total coliform analysis in the Water System's scheduled month of May 2000.

A fine in the amount of \$200 is imposed against you for failing to submit water samples for total coliform analysis in the Water System's scheduled month of August 2000.

- ▶ A fine in the amount of \$1,000 is imposed against you for failing to provide proof of public notice to DES within 30 days of the failure to sample for total coliform bacteria in February 2000.

A fine in the amount of \$1,000 is imposed against you for failing to provide proof of public notice to DES within 30 days of the failure to sample for total coliform bacteria in May 2000.

- ▶ A fine in the amount of \$1,000 is imposed against you for failing to provide proof of public notice to DES within 30 days of the failure to sample for total coliform bacteria in August 2000.

The \$3,500 fine shall be paid within 30 days of the date of the decision.

Fine payments shall be by check or money order payable to "Treasurer-State of NH" and

sent to the attention of the DES Legal Unit/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

The purpose of RSA 485, the New Hampshire Safe Drinking Water Act, is to provide a drinking water protection program for the public. To this end, Env-Ws 325.02 requires the Water System to test for the presence of total coliform bacteria on a quarterly basis. Under Env-Ws 351.01, the Water System is required to provide proof of public notice to DES for the failure to sample. As the owners of the Water System, you are responsible for testing for coliform bacteria and for providing public notice to DES when you failed to sample for coliform bacteria. The record shows that you failed to submit water samples for total coliform analysis for February, May, and August 2000 and to provide proof of public notice to DES within 30 days of the failure to sample for total coliform bacteria during these months. Because you failed to comply with the rules, you endangered the health of the users of the Water System.

This decision is based on the following findings and conclusions:

- 1 Brian and Marlene Adair ("the Adairs") are the owners of a water system, 14-unit motel, and 50-seat restaurant located on Route 104, Danbury, NH ("the Water System").
- 2 Under RSA 485:1-a, X, the Water System is classified as a transient, non-community system because it is a non-community water system that does not regularly serve at least the same 25 persons over six months per year.
- 3 Env-Ws 325.02 requires a transient, non-community water system serving less than 1,000 people to submit a minimum of one sample every six months to test for the presence of total coliform bacteria, and one sample quarterly following the presence of total coliform bacteria in the water sample.
- 4 Env-Ws 351.01 requires the owner of a public water system to notify consumers served by the system of the contamination and provide proof of public notice to the Division.
- 5 In November 1996, after a scheduled water sampling, coliform bacteria was found in the Water System.
- 6 Due to the contamination, the Adairs were required to submit a water sample for December 1996, and the Water System was placed on a sampling schedule which required one water sample every quarter during the sampling months of February, May, August, and November.
- 7 On February 4, 1997, DES issued Letter of Deficiency 97-14 ("the LOD") to the Adairs for failing, in part, to perform the required water sampling for December 1996. The LOD requested, in part, that the Adairs submit the water sample and verify in writing the sampling agent and the laboratory performing the testing.
- 8 On February 10, 1997, the Adairs submitted a water sample but failed to identify the agent

and laboratory.

9. On July 28, 1997, DES issued Administrative Order No. WD 97-37 ("the Order"), ordering the Adairs, in part, to identify the sampling agent and the laboratory performing the testing.
10. The Adairs corrected the violations, and on December 11, 1998, DES released the Order.
11. In 1999, the Adairs submitted required water samples for February, May, August, and November.
12. In 2000, the Adairs failed to submit required water samples for February, May, and August.
13. By letters dated March 29 and July 21, 2000, DES notified the Adairs of the February 2000 violation.
14. By letters dated June 28 and October 26, 2000, DES notified the Adairs of the May 2000 violation.
15. By letters dated September 25, 2000 and January 25, 2001, DES notified the Adairs of the August 2000 violation.
16. In each of the letters identified in #13, 14, and 15 above, DES included instructions and a form for public notice and requested that the Adairs submit proof of public notification to the Division.
17. The Adairs violated Env-Ws 325.02 by failing to submit water samples for total coliform analysis in the Water System's scheduled month of February 2000.
18. For a violation of Env-Ws 325.02, Env-C 602.03(a) authorizes a fine of \$100.
19. The Adairs violated Env-Ws 325.02 by failing to submit water samples for total coliform analysis in the Water System's scheduled month of May 2000.
20. For a violation of Env-Ws 325.02, Env-C 602.03(a) authorizes a fine of \$200.
21. The Adairs violated Env-Ws 325.02 by failing to submit water samples for total coliform analysis in the Water System's scheduled month of August 2000.
22. For a violation of Env-Ws 325.02, Env-C 602.03(a) authorizes a fine of \$200.
23. The Adairs violated Env-Ws 351.01 by failing to provide proof of public notice to the Division within 30 days of the failure to sample for total coliform bacteria in February 2000.

- 24 For a violation of Env-Ws 351.01, Env-C 602.04(b) authorizes a fine of \$1,000.
- 25 The Adairs violated Env-Ws 351.01 by failing to provide proof of public notice to the Division within 30 days of the failure to sample for total coliform bacteria in May 2000.
- 26 For a violation of Env-Ws 351.01, Env-C 602.04(b) authorizes a fine of \$1,000.
- 27 The Adairs violated Env-Ws 351.01 by failing to provide proof of public notice to the Division within 30 days of the failure to sample for total coliform bacteria in August 2000.
- 28 For a violation of Env-Ws 351.01, Env-C 602.04(b) authorizes a fine of \$1,000.
- 29 None of the factors identified in Env-C 601.09(c)(1) through (4) apply to reduce the amount of fine that can be imposed for the violations noted in # 17, 19, 21, 23, 25, and 27 above because the burden of proof for these factors is on the Adairs, and they did not attend or present evidence at the hearing.

You violated Env-Ws 325.02 by failing to submit water samples for total coliform analysis in the Water System's scheduled months of February, May, and August 2000. You violated Env-Ws 351.01 by failing to provide proof of public notice to DES within 30 days of the failure to sample for total coliform bacteria for the months of February, May, and August 2000. Thus, for the reasons discussed above, I have concluded that the \$3,500 fine imposed against you is appropriate.

As you know, the hearing on this matter was scheduled for July 16, 2001. The hearing was held as scheduled, however, you were not present, nor was anyone else present on your behalf. A rehearing was scheduled for March 11, 2002. The hearing was held as scheduled but you were not present at the rehearing. Moreover, because you did not inform the presiding officer of your absence prior to the hearings, the hearings were held pursuant to Env-C 204.09, subject to a motion to reconvene. Subsequently, you failed to file a motion to reconvene either hearing.

Even though you did not attend the hearings, I believe it is proper for this decision to issue. I want to remind you, however, that you and any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

Very truly yours,


COPY
George Dana Bisbee
Assistant Commissioner

Enclosure

cc: Harry T. Stewart, P.E., Director, Water Division
Mark Harbaugh, DES Enforcement Attorney
Gretchen Rule, DES Legal Unit
Susan Weiss Alexant, DES Hearings and Rules Attorney
Board of Selectmen, Town of Danbury
Health Officer, Town of Danbury
USEPA, Region I